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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/751,018

12/31/2003

Michael K. Eschmann

ITL.1083US (P18347)

3661

21906

7590

05/12/2006

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EXAMINER

SCHLIE, PAUL W

64

ART UNIT

PAPER NUMBER

2186

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/751,018 | <b>Applicant(s)</b><br>ESCHMANN, MICHAEL K. |  |
|                              | <b>Examiner</b><br>Paul W. Schlie    | <b>Art Unit</b><br>2186                     |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-25 have been examined.

#### ***Response to Arguments***

2. Applicant's arguments filed 4/21/06 have been fully considered but they are not persuasive.

As although arguably the rejection of the applicant's independent claims may possibly have been better structured as being based exclusively on 35 U.S.C. paragraph 102, citing that that read/write requests within the context of the reference are implicitly considered demand requests as defined by the applicant (given the applicant's effective definition and few examples of such requests); as the rejection is based on being "anticipated by or, in the alternative ... as obvious" and it's intent to merely to cite the applicant's definition of such requests was sufficiently clear, in further view of no other objections being cited by the applicant, the rejection is sustained.

#### ***Claim Rejections - 35 USC § 102/103***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2186

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-25 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Herbst et al. (US App. Pub. 2003/0145165).

As per independent claims 1, 10 and 18, Herbst et al. teaches a cached disk sub-system and/or method comprising the means to prioritize the execution of demand (i.e. read/write) requests over the execution of non-demand (i.e. flush/write-back) requests and/or operations (see figure 3); where although Herbst et al. does not explicitly identify read or write requests as being demand requests, it is considered obvious to one of ordinary skill in the art that such requests are defined as such within the context of the applicants disclosure, thereby considered equivalent for the purpose of examination.

As per claims 2-9, 11-17 and 19-25, being dependent on claims 1, 10, 18, or correspondingly dependant claim inclusively, Herbst et al. further teaches that non-demand write-back's begun during an otherwise idle period may be preempted after receiving a demand request (figure 3 elements 318 and 324) such that the uncompleted portion of said non-demand write-back may be re-queued (figures 4 and 5, and paragraph 16). Where although Herbst et al. does not explicitly teach requests may be queued, that non-demand write-back operations may include flush operation requests, or that such requests may be generated by a driver; it is considered inherent that requests may be queued as it is taught that a previously initiated but non-complete write-back operation may be preempted by an otherwise pending (i.e. queued) demand

Art Unit: 2186


operation request, and obvious to one of ordinary skill in the art at the time of the claimed invention that non-demand requests may include flush requests issued from an operating system interface (i.e. driver) as acknowledged by Eschmann et al. as prior art within the "Background" section of the application. Any potentially remaining limitations not otherwise considered explicitly addressed are correspondingly considered obviously inherent in that taught, clearly obvious to one of ordinary skill in the art at the time of the claimed invention, and/or not sufficient to patentably distinguish over prior art.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul W. Schlie whose telephone number is 571-272-6765. The examiner can normally be reached on Mon-Thu 8:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Kim can be reached on 517-272-4182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**PIERRE BATAILLE**  
**PRIMARY EXAMINER**  
5/9/06